MT LEGISLATIVE HISTORY

Chapter 430 1977

Bill (H) 251 S _____ Original bill & hist. ___C

H. Committee on Judiciary

Hearing Date(s) Jan 24 ✓C
Jan 26 ✓C
Feb 11 ✓C
_____ ___C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) Mar 25 ✓C
Mar 31 ✓C
_____ ___C
_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 79	2-4-77	3-4-77	4-19-77				4-19-77		
H.B. 80	1-25-77	3-3-77	3-16-77					3-16-77	
H.B. 116	1-27-77	3-10-77	3-16-77					3-16-77	
H.B. 164	1-27-77	3-10-77	3-29-77					3-29-77	
H.B. 177	1-25-77	3-8-77	3-24-77					3-24-77	
H.B. 200	3-5-77	3-28-77	Tabled 3-30-77						
H.B. 202	1-27-77	3-4-77	3-4-77				3-4-77		
H.B. 226	2-2-77	2-21-77	3-12-77					3-12-77	
H.B. 238	3-11-77	3-22-77	3-24-77						3-24-77
H.B. 243	2-23-77	3-25-77	Tabled 3-31-77						
H.B. 247	2-24-77	3-18-77	3-18-77					3-18-77	
H.B. 251	2-21-77	3-25-77	3-31-77					3-31-77	
H.B. 260	2-21-77	3-9-77	3-19-77				3-19-77		
H.B. 261	4-6-77	4-8-77	Referred to Fin. 4-12-77		& Clms.	Comm.			
H.B. 280	2-5-77	3-29-77	3-29-77					3-29-77	
H.B. 291	2-19-77	3-16-77	3-16-77				3-16-77		

(See Separate Sheet for Senate, House Bills, and Resolutions)

LC 0762/01

H BILL NO. 251

INTRODUCED BY Harper Swift Dussault Sheldon Hepler (by request - Ass. of County Attorneys)

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ALTERNATIVE TO IMPRISONMENT FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO PROVIDE FOR SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON COUNSELING OR TREATMENT; AND TO PROVIDE A PENALTY FOR DRIVING DURING A PERIOD OF SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES; AMENDING SECTIONS 31-146 AND 32-2142, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"32-2142. Persons under the influence of ~~intoxicating liquor~~ alcohol or of drugs. ~~(a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.~~

~~(b)~~ (1) In any criminal prosecution for a violation of ~~paragraph (a)~~ subsection (2) of this section relating to driving a vehicle while under the influence of ~~intoxicating liquor~~ alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

~~1.~~ (a) If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of ~~intoxicating liquor~~ alcohol.

~~2.~~ (b) If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ alcohol, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

~~3.~~ (c) If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of ~~intoxicating liquor~~ alcohol.

4. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood.

5. The foregoing provisions of ~~paragraph (b)~~ this

subsection (1) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ alcohol.

~~(c)~~(2) It is unlawful and punishable as provided in ~~paragraph (d)~~ subsection (3) of this section for any person who is ~~an habitual user of or~~ under the influence of alcohol or any narcotic drug or ~~who is under the influence of~~ any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this ~~paragraph~~ subsection is or has been entitled to use such a drug under the laws of this state ~~shall~~ does not constitute a defense against any charge of violating this ~~paragraph~~ subsection.

~~(d)~~(3) Every person who is convicted of a violation of this section shall be punished by ~~imprisonment in the county or city jail for not more than six (6) months~~ a suspension of his operator's license or nonresident's operating privilege for not more than 6 months, to which may be added, in the discretion of the court, ~~or by~~ a fine of not less than ~~one hundred dollars ($100.00)~~ or more than ~~five hundred dollars ($500.00) or by both such fine and imprisonment.~~ On a second conviction, he shall be punished by ~~imprisonment in the county or city jail for not less than ten (10) days nor~~

~~more than six (6) months~~ a suspension of his operator's license or nonresident's operating privilege for not less than 3 months or more than 6 months, to which may be added, ~~at~~ in the discretion of the court, a fine of not less than ~~three hundred dollars ($300.00)~~ nor or more than ~~five hundred dollars ($500.00)~~. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than ~~thirty (30)~~ days ~~nor~~ or more than ~~one (1)~~ year and a revocation of his operator's license or nonresident's operating privilege for not less than 1 year, to which may be added, ~~at~~ in the discretion of the court, a fine of not less than ~~five hundred dollars ($500.00) nor~~ or more than ~~one thousand dollars ($1,000.00)~~.

(4) The court may, in its discretion, suspend the execution of any sentence imposed under subsection (3) on the condition that the defendant obtain counseling approved by the court or that he submit to medical treatment in a suitable public or private institution. Each individual or institution providing such counseling or treatment shall, at the commencement of the counseling or treatment, notify the court that the defendant has been accepted for counseling or treatment. If the defendant fails to attend the counseling sessions or the treatment program, the counselor or institution shall notify the court of the failure.

(5) A person whose operator's license or nonresident's

operating privilege has been suspended or revoked under subsection (3) of this section and who, during such suspension or revocation, drives a motor vehicle shall be punished by a fine of not more than $500 or imprisonment for not more than 6 months, or both.

~~(e)~~(6) Each ~~and--every~~ municipality in this state is ~~hereby~~ given authority to enact ~~the--foregoing--paragraphs (a),--(b),--(c)--and--(d)~~ subsections (1) through (5) of this section, with the word "state" in the first sentence of ~~paragraphs--(a)--and--(c)~~ subsection (2) changed ~~in each instance~~ to read "municipality", as an ordinance, and is ~~hereby~~ given jurisdiction of the enforcement of ~~said~~ the ordinance, and of the imposition of the fines and penalties therein provided.

~~(f)~~(7) The court or clerk of court shall notify the division of motor vehicles of the department of justice of all convictions and forfeitures of bail not vacated under subsection (3) involving an order of suspension or revocation of the defendant's operator's license or nonresident's operating privilege. Upon receiving such notice, ~~the--board~~ the division shall forthwith suspend or revoke the operator's license or ~~permit--to--drive--and operating--privilege--and--any--nonresident~~ nonresident's operating privilege ~~of--any--person--upon--receiving--a--record--of such--person's--conviction--or--forfeiture--of--bail--not--vacated~~

~~under--this--section~~ for the period of time ordered by the court."

Section 2. Section 31-146, R.C.M. 1947, is amended to read as follows:

"31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. Manslaughter resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, except as provided in 32-2142;

3. Any felony in the commission of which a motor vehicle is used;

4. Failure to stop and render aid as required under the laws of this state in the event of a motor-vehicle accident resulting in the death or personal injury of

another;

5. Perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;

6. Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months."

-End-

STATE OF MONTANA

REQUEST NO. 479-77

FISCAL NOTE

Form BD-15

ompliance with a written request received February 8, 19 77, there is hereby submitted a Fiscal Note House Bill 251 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.
kground information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members he Legislature upon request.

SCRIPTION OF PROPOSED LEGISLATION:

n act to provide an alternative to imprisonment for persons convicted of driving while under the influence of alcohol or ugs; to provide for suspension or revocation of driving privileges; to clarify that habitual users who drive are not subject criminal penalties unless they are under the influence when they drive; to provide for suspended execution of sentence nditioned upon counseling or treatment; and to provide a penalty for driving during a period of suspension or revocation driving privileges.

ISCAL IMPACT:

is assumed that the main objective of this bill is to suspend the driving privilege of first and second offenders of this ct, rather than punishment by imprisonment. It is further assumed that the imposition of a fine will remain in the dis-etion of the court. This being the case, it is impossible to determine any change in revenue. There should be no crease in expenses to the State of Montana by the passage of this bill. No realistic estimate of the effect on local overnment can be provided.

Richard L. Dunn

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-18-77

The first proponent to testify was Larry Elison of the Governor's office who said that he did the investigation of the Pine Hills school. He told the committee that funding is going to be difficult to arrange and the fiscal note could be used to obtain federal funding provided we plan to have a pilot project. He gave the committee a copy of his report on Pine Hills. (See Exhibit 1) He said that juveniles are locked in at both Pine Hills and Mountain View, but they can run away from Mountain View. He felt it would be better to keep those youths in the local lockup for 3 days to evaluate them than to send them to Custer Lodge at Pine Hills for a 45-day evaluation, although he does not like to see "kids" locked up even for 3 days in jail and likes less to see them in Custer Lodge for 45 days.

The next proponent was Mr. R. Meek who represents the Probation Officers Assn. and is a probation officer in Helena. He said that he agrees with the bill because the institutions are in bad shape. It has been mentioned at this hearing that we could use the local mental health facilities, but they are presently complaining because we are overloading them with evaluations now. Many of the children they send to the institutions are habitual truants. Some of these institutions have schooling, but some continually turn them down because the types of children we send are runaways. If there is money for this bill, Mr. Meek suggested that the legislature have present facilities upgraded. He said that the Helena office very seldom sends children to Pine Hills or Mountain View except when they need security facilities.

CONSIDERATION OF HOUSE BILL 243:

Rep. Gary Kimble of Missoula, sponsor of the bill, told the committee he introduced this bill because it would help in some instances where people are out of work and go on welfare and then find a job but need a car for transportation. This would allow the court to issue a permit so that the person who has been sentenced on a DWI charge can drive to work.

Capt. Tooley of the Montana Highway Patrol testified as an opponent of this bill. He said that he does not object to the principle behind the bill, but he does object to the method of providing it which he feels that the patrol would have problems with. When the revocation time ends, the person is to provide eligibility information for 3 years. The Montana Highway Patrol have amendments which they will propose for HB 251 which, they feel, would solve this problem.

CONSIDERATION OF HOUSE BILL 251:

Tom Honzel who represents the County Attorneys Assn. explained this bill to the committee for the sponsor. He said that by introducing this bill they hope to solve the problem of the DWI person who needs a vehicle for transportation to go to work or to school, etc.. Under the present law there is a jail sentence and fine, and the person loses his license for 30 days for the first conviction.

When they are convicted they tell the judge that they need the car and that they have an alcohol problem and some judges defer the sentence with the provision that the person take treatment. He said that he does not believe that the justices of peace have this privilege. He thinks that HB 251 is a better solution to the problem than HB 243. The House felt it was important to add lines 1 through 4 on page 4 and lines 19 through 22. The important parts of the bill are subsections (3) and (4). In subsection (4) the court may, in its discretion, suspend sentence upon the condition that the driver must successfully complete the school prescribed in this bill. Since the law has decriminalized drinking offenses, they are asking for a law which will give them something to work with.

Capt. Tooley of the Montana Highway Patrol submitted amendments to the bill and said that he is afraid the patrol would have too many penalty forms if not amended. (See Exhibit 2) He explained the proposed amendments and what they would accomplish. The second amendment would make a substantive change in the bill. They need some insurance protection for the people who are going to drink and drive. The patrol's operation would not be so complicated if they could understand the instructions and the person could get insurance. At this time, Capt. Tooley gave the committee a copy of the bill as it would read with the amendments incorporated in it. (See Exhibit 3)

Rep. Gould told the committee that HB 355 should be coming to the Senate Finance & Claims Committee the early part of next week or to the Judiciary Committee, and he asked that they be all considered together as a package.

Rep. Kimble told the committee he did not oppose nor was he in favor of HB 251 -- that it was just a matter of what the committee wants.

Tom Honzel said that they think the schooling (the alcohol treatment program) is the key thing in this bill. Basically Capt. Tooley's amendments would do away with that, and he thinks the patrol amendments should be expanded a little.

CONSIDERATION OF HOUSE BILL 356:

Rep. Gould of District 98 in Missoula, sponsor of the bill, said that this would do away with the deferred imposition of sentence in a DWI offense. He feels that it is a very necessary bill.

Capt. Tooley of the Montana Highway Patrol, a proponent of the bill, said the best thing that can be said for this bill is the offense of DWI. They have had occasions where the deferred imposition has been imposed and they feel that, if this package of bills goes through, there would be no need to defer and it would be advantageous to have this bill. He said that HB 356 goes hand in hand with HB 355 and 251 -- even without HB 251, and that intoxication does include both alcohol or drugs.

After questions by committee members, the hearing was closed.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 3-25-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman			✓
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat			✓
TOWE, Tom	✓		
WARDEN, Margaret	✓		

It is respectfully suggested that House Bill 251 be amended as follows:

1. Amend page 1, line 11 of the title, striking the word man - datory and page 1, line 12 by adding "s" to the words "school" and "program".

2. Amend page 3, lines 21 through 24 by striking all of the underlined material.

3. Amend page 4, lines 1 through 4 by striking all of the underlined material and amend lines 6 through 9 by striking all of the underlined material and amend page 4, lines 14, 15, and 16 by striking all of the underlined material and amend page 4, line 19 through 22 by striking the underlined material.

4. Amend page 5, line 3 by striking the word "the" and substituting "a" and page 5, line 3 by adding, after the word "school", the words "approved by the court" and amend page 5, line 3 after the word "program", by adding the words "approved by the Department of Institutions." and amend page 5, line 4 by striking the words "ordered by the court".

5. Amend page 8 and 9 by striking the underlined material on lines 20 through 25 page 8, and 1 through 3 on page 9 and amend page 8, line 20 by adding, after the words "so convicted" ", and may recommend that the division issue a restricted probationary license in lieu of the suspension required in section 31-149B, provided that the individual attends a school or program if such school or program is abailable. The division shall issue such restricted probationary license unless the person is not entitled to a Montana operator's or chauffeur's license."

6. Amend page 9, line 19 after "31-155," by adding "31-184.1," and by inserting "and" before the figures "53-430" and by striking on line 20, the words and figures "and 32-2142,".

7. Amend page 10, line 16 by striking the word "or" after the word "suspend".

8. Amend page 20, line 17 by striking the word "revoke" and on line 18 strike the words "not more than" and on line 22 by striking the words "suspend or".

HOUSE BILL NO. 251

INTRODUCED BY HARPER, SCULLY, DUSSAULT, SHELDEN, KEYSER

BY REQUEST OF ASSOCIATION OF COUNTY ATTORNEYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ALTERNATIVE TO IMPRISONMENT FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO PROVIDE FOR SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR ~~MANDATORY~~ DRIVER IMPROVEMENT SCHOOLS AND ALCOHOL TREATMENT PROGRAMS. TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON COUNSELING OR TREATMENT; ~~AND TO PROVIDE A PENALTY FOR DRIVING DURING A PERIOD OF SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES;~~ AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2142, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"32-2142. Persons under the influence of ~~intoxicating liquor~~ alcohol or of drugs. ~~(a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.~~

~~(b)~~ (1) In any criminal prosecution for a violation of ~~paragraph (a)~~ subsection (2) of this section relating to driving a vehicle while under the influence of ~~intoxicating liquor~~ alcohol, the amount

Judiciary

VISITOR'S REGISTER

NAME	REPRESENTING	Check One: Support	Check One: Oppose
Sen Ludd Child	his bill H.B. 356	L	
Sen Sullivan	MHP 243		
"	" 251		
"	" 356		
[illegible]	H.B. 654		
[illegible]	Division of Motor Vehicles	A	
[illegible]	Dept. of Taxation		
[illegible]	County Attorneys HB 654		
[illegible]	Rep Dist 29 654		
Larry Nelson	H B 654 Conv. Office	Amend	

(Please leave prepared statement with Secretary)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 31, 1977

The meeting of this committee was called to order on the above date by Sen. Roberts, Vice-Chairman, at 9:45 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All committee members were present except Senator Turnage who was excused to attend another hearing. He returned to this meeting at 10:15 a.m..

EXECUTIVE SESSION

HB 251 - this bill was discussed by the committee as to whether people committing DWI's are alcoholics or not. Sen. Towe moved the adoption of the amendments which are attached. (See Attach. #1) The motion carried unanimously. He then moved that HB 251 as amended BE CONCURRED IN. The motion carried unanimously. Without objection, it was authorized to insert the words "except as otherwise provided".

HB 243 - Sen. Towe moved to table HB 243. The motion carried unanimously.

HB 356 - Sen. Lensink moved to amend section 1, page 1, line 15, following"DRIVING" by striking "WHILE INTOXICATED" and inserting "under the influence of alcohol or drugs"; and to amend the title in lines 5 and 6, following "FOR" by striking "A TRAFFIC LAW VIOLATION: and inserting "DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS". The motion carried unanimously. Sen. Towe then moved that HB 356 as amended BE CONCURRED IN. The motion carried unanimously.

At this time, Senator Turnage, who had returned and again assumed the chair, assigned the following bills to be carried on 2nd Reading:

Sen. Towe - HB 164 and 251
Sen. Regan - HB 567 and 326
Sen. Murray - HB 280
Sen. Lensink - HB 457 and 356

Sen. Turnage will carry HB 498 when it is on 2nd Reading.

HB 334 - Sen. Lensink moved that HB 334 as amended BE CONCURRED IN. The motion carried on a vote of 5 - 3 with Senators Warden, Roberts and Regan voting "No". (The amendment was made on 3/30/77 and is in the Minutes for that date.)

HB 761 - Sen. Towe moved to reconsider previous action of the committee on this bill. The motion carried unanimously. He then moved that HB 761 be laid on the table. The motion carried unanimousl

respectfully report as follows: That House Bill No. 251, the third rea
Bill, be amended as follows:

(Attach #

1. Amend title, lines 5 and 6.
Following: "ACT TO"
Strike: "PROVIDE AN ALTERNATIVE TO IMPRISONMENT FOR PERSONS CONVICTED
Insert: "REVISE THE PENALTIES FOR"

2. Amend title, lines 7 and 8.
Following: "DRUGS;"
Strike: "TO PROVIDE FOR SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES,

3. Amend title, lines 11 and 12.
Following: "DRIVE;"
Strike: "TO PROVIDE FOR MANDATORY DRIVER IMPROVEMENT SCHOOL AND ALCOHOL
[illegible] PROGRAM;"

4. Amend title, line 13.
Following: "UPON"
Strike: ~~respectfully report as follows: That~~ "COUNSELING"
Insert: "EDUCATION"

5. Amend page 3, section 1, lines 21 through 24.
Following: "months"
Strike: "a suspension of his operator's license or nonresident's operat
privilege for not more than 6 months, to which may be added, in the
discretion of the court,"

6. Amend page 4, section 1, lines 1 through 4.
Following: "imprisonment."
Strike: "ON A FIRST CONVICTION UNDER THIS SECTION, THE DEFENDANT SHALL
REQUIRED TO ATTEND A COURT-APPROVED, ALCOHOL-RELATED DRIVER IMPROVEMEN
SCHOOL."

7. Amend page 4, section 1, lines 6 through 10.
Following: "months"
Strike: "a suspension of his operator's license or nonresident's operat
privilege for not less than 1 YEAR, to which may be added, in the dis-
cretion of the court,"

8. Amend page 4, section 1, lines 14 through 16.
Following: "year"
Strike: "and a revocation of his operator's license or nonresident's op
ating privilege for not less than 1 YEAR"

STATE PUB. CO.
Helena, Mont.

9. Amend page 4, section 1, lines 19 through 22.
Following: [illegible] "$1,000;(5)"
Strike: "UPON A SECOND OR SUBSEQUENT CONVICTION OF A VIOLATION OF THIS SECTION, THE DEFENDANT SHALL BE REQUIRED TO ENROLL IN AN ALCOHOL TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS."

10. Amend page 4, section 1, line 23.
Following: "(4)"
Strike: "The"
Insert: "Except as otherwise provided in this section, the"

11. Amend page 5, section 1, line 3.
Following: line 2.
Strike: "THE"
Insert: "a course in a"
Following: "SCHOOL"
Insert: "approved by the court"
Following: "OR"
Insert: "an"
Following: "PROGRAM"
Insert: "approved by the department of institutions"

12. Amend page 5, section 1, line 4.
Following: line 3
Strike: "ORDERED BY THE COURT"
Following: "Each"
Strike: "individual"
Insert: "school"

13. Amend page 5, section 1, line 5.
Following: "such"
Strike: "counseling"
Insert: "education"

14. Amend page 5, section 1, line 6.
Following: "of the"
Strike: "counseling"
Insert: "education"

15. Amend page 5, section 1, line 7.
Following: "accepted"
Strike: "for counseling"
Insert: "by the school"

16. Amend page 5, section 1, lines 8 and 9.
Following: "treatment"
Insert: "program"
Following: "attend the"
Strike: "counseling sessions"
Insert: "school"
Following: ", the "
Strike: "counselor"
Insert: "school"

17. Amend page 5, section 1, line 10.
Following: "through"
Strike: "(5)"

18. Amend page 7, section 2, lines 5 and 6.
Following: "thereof"
Strike: ", except as provided in 32-2142"
Insert: "except as provided in 31-144"
19. Amend page 8, section 3, line 20 through line 3 on page 9.
Following: "convicted."
Strike: line 20 through line 3 on page 9 in their entirety
Insert: "The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 31-149(b) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license."

20. Amend page 9, section 4, line 10.
Following: "31-155,"
Insert: "31-184.1,"
Following: "and"
Insert: "and"

21. Amend page 9, section 4, line 20.
Following: line 19
Strike: "and 32-2142,"

22. Amend page 10, section 4, lines 16 and 17.
Following: "suspend"
Strike: "or revoke"

23. Amend page 10, section 4, line 18.
Following: "days"
Strike: "not more than"

24. Amend page 10, section 4, line 19.
Following: "shall"
Strike: "suspend or"

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 2-21-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 202	act to raise the limitation on the amount of recovery from parents of children who willfully destroy property from $300 to $1,500 etc.	1-17	Scully	Weds 19th	do pass	1-19
HB 243	act to require the division of motor vehicles to issue special permit to operate a motor vehicle - driving under the influence, etc.	1-19	Kimble	Weds 26th	hold for amendment 28th do pass as amended	2-11
HB 251	act to provide alternative to imprisonment for persons convicted of driving while under the influence of alcohol or durgs; to provide for suspension, etc.	1-19	Harper	Monday 24th	sub-committee Weds 26th do pass as amended	2-11
HB 260	act to provide for mandatory minimum sentence of imprisonment of 10 days, etc. for persons convicted of a third or subsequent offense driving under the influence.	1-19	Gould	Monday 24th	sub-committee Weds 26th do pass as amended	2-11
H B 261	act to require mandatory nimimum prison sentences for certain violetn and drug-related crimes and for any crime committed with a dangerous weapon, etc.	1-19	Ramirez	Monday 24th	sub-committee Monday 24th do pass	1-28
HB 226	to provide a penalty for reckless driving which results from an attempt to flee from a police officer.	1-18	Keyser	Monday 24th	do pass	Weds 26th

REPRESENTATIVE GOULD: What we are hoping to do, is we can get a little bit of funding, so what we are going to try to do is try rehabilitation and that is the reason for the 3rd instead of the 2nd.

Discussion about the 60 day limit, the third offense, the cost that might be involved, etc.

CAPTAIN TOOLEY explained the point system and how the habitual offender could accumulate 30 points within every 5 year period.

The hearing closed on HB #260.

The hearing opened on House Bill #251:

REPRESENTATIVE HAL HARPER, DISTRICT #30:
This is really a bad problem that we don't see any real progress toward being solved, persons involved in driving while intoxicated or under the influence of drugs. We have to provide some way to revoke their driving privileges.

PROPONENT, TOM HONZEL, REPRESENTING THE COUNTY ATTORNEYS:
The DWI problem has been the biggest problem of county attorneys for as long as I can remember. We are trying to come up with a solution to this problem. This will help but will not completelys solve the problem. We just have to consider rehabilitation. For some time now, what has happened is that the sentence is deferred or suspended. The justice of the peace officers and the judges are deferring if they, the offender, goes for some kind of treatment program. We would like to be notified that a person is attending the treatment program or if he has not then we can invoke the sentence. It gives us a tool to work with. I would recommend you give it a do pass.

PROPONENT, ROBERT OCKLER, GALEN STATE HOSPITAL:
We have needed something like this for a long time. I have seen this type of thing work. In North Dakota they have this type of legislation and it is working. During the 28 day program we have a patient review. He discussed the program and how it worked and that it had been successful. I am very much in favor of this bill. We have a problem with leverage and this bill gives us some leverage. It gives us a chance to take a look and evaluate this program.

There were no opponents.

Mr. HARPER: Answered questions on suspending the license, how section 4 would take care of this, and about the three steps in the bill; 1st, suspension, not more than 6 months; 2nd, stronger, and 3rd the mandatory sentence. We feel it is a proper gradation.

The hearing closed on House Bill #251.

McLane
Ramirez
Roth
Seifert

The next bill to be brought up for consideration was House Bill #251.

This bill was referred to the sub-committee, along with House Bill #260, (all of the DWI bills in the committee).

The next bill brought up for consideration was House Bill #226,

REPRESENTATIVE SEIFERT made the motion to "DO PASS". Motion seconded.

There was discussion about the penalty, jurisdiction, danger, etc. Question called, motion carried, vote unanimous.

The next bill under consideration was House Bill #320.

REPRESENTATIVE KEYSER made the motion to "DO PASS".

REPRESENTATIVE RAMIREZ made a motion to amend line 4 of the title, following: "TO" strike "AMEND AND".

Motion carried, question called. Motion carried with unanimous "DO PASS AS AMENDED".

The next bill up for consideration was House Bill #291.

REPRESENTATIVE LORY made a motion to "DO PASS". Motion seconded. Discussion followed concerning the possession and transfer, having the right of presumption, in the case of someone bringing something to a second-hand store, etc.

REPRESENTATIVE LORY made a substitute motion to table and hold for future action. Substitute motion carried with unanimous vote.

SUB-COMMITTEE TO STUDY HOUSE BILL #188 and 261 gave a preliminary report so that the whole committee could have some time to think about it before the final report to be presented Friday. The Sub-committee recommended that House Bill #261 come out first and hold #188 to come out later. These bills are on mandatory sentencing.

REPRESENTATIVE RAMIREZ suggested that on House Bill #261 the 5th sub-section, line 24, page 16, be abolished altogether or it should be limited to 1st offense. The committee agreed to delay any action until the full report of the sub-committee.

MEETING ADJOURNED 10:20 A. M.

Representative Scully, Chairman

MEC/dm

Mary Ellen Connelly, secretary

JUDICIARY EXECUTIVE
February 11, 1977

HOUSE BILL #260:
REPRESENTATIVE LORY read the suggested amendments as proposed by the sub-committee. Representative Ramirez asked that the amendments be separated and voted separately.
REPRESENTATIVE LORY made a motion that the first amendment "do pass". The motion carried with the vote unanimous.
REPRESENTATIVE LORY made a motion that the second amendment "do pass". The motion carried with Representative Ramirez voting "no".
REPRESENTATIVE LORY made a motion the bill "do pass as amended". The motion carried with Representative Teague voting "no".

HOUSE BILL #355:
REPRESENTATIVE LORY made a motion "do pass".
The motion carried with Representatives Day, McLane and Ramirez voting "no".

HOUSE BILL #354:
REPRESENTATIVE LORY made a motion to table. The motion carried with the vote unanimous.

HOUSE BILL #251:
REPRESENTATIVE LORY explained what the sub-committee had done with this bill and the reasons behind what they did.

1st offense: The offender has to go to school. The judge has the right to suspend the fine and the conviction.
2nd offense: The offender should be required to enroll in the alcohol treatment center and the judge has the right to suspend.
3rd offense: The offender must have 10 days mandatory-then can be suspended,

If the offender refuses to attend the school he can be cited for contempt of court.

REPRESENTATIVE LORY made a motion the committee report be adopted. The motion carried with the vote unanimous.
REPRESENTATIVE LORY made a motion "do pass as amended".
The motion carried with the vote unanimous.

REPRESENTATIVE DAY reported from the water sub-committee.

HOUSE JOINT RESOLUTION #43:
REPRESENTATIVE DAY made a motion "do pass".
The motion carried with the vote unanimous.

HOUSE JOINT RESOLUTION #31:
REPRESENTATIVE DAY made a motion "do not pass".
The motion carried with the vote unanimous.

HOUSE BILL #573:
REPRESENTATIVE RAMIREZ explained the amendments and the reasons for them. REPRESENTATIVE DAY made the motion "do pass as amended".
The motion carried with the vote unanimous.

HOUSE BILL NO. 251

INTRODUCED BY HARPER, SCULLY, DUSSAULT, SHELDEN, KEYSER

BY REQUEST OF ASSOCIATION OF COUNTY ATTORNEYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ~~PROVIDE AN ALTERNATIVE TO IMPRISONMENT FOR PERSONS CONVICTED OF~~ REVISE THE PENALITIES FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; ~~TO PROVIDE FOR SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES;~~ TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; ~~TO PROVIDE FOR MANDATORY DRIVER IMPROVEMENT SCHOOL AND ALCOHOL TREATMENT PROGRAMS;~~ TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON ~~COUNSELING~~ EDUCATION OR TREATMENT; ~~AND TO PROVIDE A PENALTY FOR DRIVING DURING A PERIOD OF SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES;~~ AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2142, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"32-2142. Persons under the influence of ~~intoxicating liquor~~ alcohol or of drugs. ~~(a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.~~

~~(b)~~(1) In any criminal prosecution for a violation of ~~paragraph (a)~~ subsection (2) of this section relating to driving a vehicle while under the influence of ~~intoxicating liquor~~ alcohol, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

~~1.~~(a) If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of ~~intoxicating liquor~~ alcohol.

~~2.~~(b) If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of ~~intoxicating liquor~~ alcohol, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

~~3.~~(c) If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of ~~intoxicating liquor~~ alcohol.

~~4.~~ Per cent by weight of alcohol in the blood shall be

REFERENCE BILL

based upon grams of alcohol per one hundred (100) cubic centimeters of blood~~.~~

~~5.~~ The foregoing provisions of ~~paragraph (b)~~ this subsection (1) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of ~~intoxicating liquor~~ alcohol.

~~(c)~~(2) It is unlawful and punishable as provided in ~~paragraph (d)~~ subsection (3) of this section for any person who is ~~an habitual user of or~~ under the influence of alcohol or any narcotic drug or ~~who is under the influence of~~ any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive or be in actual physical control of a motor vehicle within this state. The fact that any person charged with a violation of this ~~paragraph~~ subsection is or has been entitled to use such a drug under the laws of this state ~~shall~~ does not constitute a defense against any charge of violating this ~~paragraph~~ subsection.

~~(d)~~(3) Every person who is convicted of a violation of this section shall be punished by ~~imprisonment in the county or city jail for not more than six (6) months~~ a suspension of his operator's license or nonresident's operating privilege for not more than 6 months, to which may be added, ~~in the discretion of the court,~~ ~~or by~~ a fine of not less than ~~one hundred dollars ($100.00)~~ or more than ~~five hundred~~

~~dollars ($500.00) or by both such fine and imprisonment. ON A FIRST CONVICTION UNDER THIS SECTION, THE DEFENDANT SHALL BE REQUIRED TO ATTEND A COURT APPROVED, ALCOHOL RELATED DRIVER IMPROVEMENT SCHOOL.~~ On a second conviction, he shall be punished by ~~imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months a suspension of his operator's license or nonresident's operating privilege for not less than 3 months or more than 6 months 1 YEAR, to which may be added, at in the discretion of the court,~~ a fine of not less than ~~three hundred dollars ($300.00) nor~~ or more than ~~five hundred dollars ($500.00).~~ On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than ~~thirty (30)~~ days ~~nor~~ or more than ~~one (1)~~ year ~~and a revocation of his operator's license or nonresident's operating privilege for not less than 1 year,~~ to which may be added, ~~at~~ in the discretion of the court, a fine of not less than ~~five hundred dollars ($500.00) nor~~ or more than ~~one thousand dollars ($1,000.00).~~ ~~UPON A SECOND OR SUBSEQUENT CONVICTION OF A VIOLATION OF THIS SECTION, THE DEFENDANT SHALL BE REQUIRED TO ENROLL IN AN ALCOHOL TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS.~~

~~(4) The~~ EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE court may, in its discretion, suspend the execution of any sentence imposed under subsection (3) on the condition

that the defendant ~~obtain counseling approved by the court or that he submit to medical treatment in a suitable public or private institution~~ SUCCESSFULLY COMPLETE ~~THE~~ A COURSE IN A DRIVER IMPROVEMENT SCHOOL APPROVED BY THE COURT OR AN ALCOHOL TREATMENT PROGRAM APPROVED BY THE DEPARTMENT OF INSTITUTIONS ~~ORDERED BY THE COURT~~. Each ~~individual~~ SCHOOL or institution providing such ~~counseling~~ EDUCATION or treatment shall, at the commencement of the ~~counseling~~ EDUCATION or treatment, notify the court that the defendant has been accepted ~~for counseling~~ BY THE SCHOOL or treatment PROGRAM. If the defendant fails to attend the ~~counseling sessions~~ SCHOOL or the treatment program, the ~~counselor~~ SCHOOL or institution shall notify the court of the failure.

~~(5) A person whose operator's license or nonresident's operating privilege has been suspended or revoked under subsection (3) of this section and who, during such suspension or revocation, drives a motor vehicle shall be punished by a fine of not more than $500 or imprisonment for not more than 6 months, or both.~~

~~(6)~~(5) Each ~~and every~~ municipality in this state is ~~hereby~~ given authority to enact ~~the foregoing paragraphs (a), (b), (c), and (d)~~ subsections (1) through ~~(5)~~ (4) of this section, with the word "state" in the first sentence of ~~paragraphs (a) and (c)~~ subsection (2) changed ~~in each instance~~ to read "municipality", as an ordinance, and is

~~hereby~~ given jurisdiction of the enforcement of ~~said~~ the ordinance, and of the imposition of the fines and penalties therein provided.

~~(f)~~(7) ~~The court or clerk of court shall notify the division of motor vehicles of the department of justice of all convictions and forfeitures of bail not vacated under subsection (3) involving an order of suspension or revocation of the defendant's operator's license or nonresident's operating privilege. Upon receiving such notice, the board~~ the division ~~shall forthwith suspend or revoke the operator's license or permit to drive and operating privilege and any nonresident~~ nonresident's operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section ~~for the period of time ordered by the court~~."

Section 2. Section 31-146, R.C.M. 1947, is amended to read as follows:

"31-146. Mandatory revocation of license by board or chief upon proper authority. The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become

final:

1. Manslaughter resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of ~~intoxicating liquor~~ ALCOHOL or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof~~, except as provided in 32-2142~~ EXCEPT AS PROVIDED IN 31-149;

3. Any felony in the commission of which a motor vehicle is used;

4. Failure to stop and render aid as required under the laws of this state in the event of a motor-vehicle accident resulting in the death or personal injury of another;

5. Perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law ~~relating~~ to the ownership or operation of motor vehicles;

6. Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months."

SECTION 3. SECTION 31-145, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"31-145. When court to forward license to ~~board~~ division and report convictions. (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the ~~board~~ division of motor vehicles of the department of justice, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within ~~five (5)~~ days, forward ~~said~~ the license to the ~~board~~ division and at the same time forward a record of such conviction to the ~~board~~ division, providing that if such person does not possess a driver's license the court shall so indicate in its report to the ~~board~~ division.

(b) Every court having jurisdiction over offenses committed under ~~this act, or~~ any ~~other~~ act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, within ~~five (5)~~ days, to the ~~board~~ division a record of the conviction or forfeiture of bail, not vacated, of any person in ~~said~~ the court for a violation of any ~~said~~ such laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. ~~The court or clerk of court shall notify the division of all convictions and forfeitures of bail not vacated under 32-2142(3) involving an order of~~

HB 0251/03

~~suspension or revocation of the defendant's operator's license or nonresident's operating privilege. Upon receiving such notice, the division shall immediately suspend or revoke the operator's license or nonresident's operating privilege for the period of time ordered by the court.~~ IF THE COURT MAY ALSO RECOMMEND THAT THE DIVISION ISSUE A RESTRICTED PROBATIONARY LICENSE IN LIEU OF THE SUSPENSION REQUIRED IN 31-149(B) ON THE CONDITION THAT THE INDIVIDUAL ATTEND A DRIVER IMPROVEMENT SCHOOL OR AN ALCOHOL TREATMENT PROGRAM IF ONE IS AVAILABLE. THE DIVISION SHALL ISSUE A RESTRICTED PROBATIONARY LICENSE UNLESS THE PERSON OTHERWISE IS NOT ENTITLED TO A MONTANA OPERATOR'S OR CHAUFFEUR'S LICENSE.

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license, such period of revocation shall commence from date of conviction or forfeiture of bail."

SECTION 4. SECTION 31-149, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"31-149. Period of suspension or revocation. (a) The

~~board shall~~ division may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, 31-184.1, 53-424, ~~and~~ AND 53-430, ~~and 32-2142~~, R. C. M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the ~~board shall~~ division may not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of ~~intoxicating liquor~~ alcohol or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the ~~board~~ division shall, upon receiving a report of such conviction

or forfeiture of bail or collateral not vacated, suspend ~~or revoke~~ the license or driving privilege of such person for a period of ~~sixty-(60)-days~~ ~~not--more--than~~ 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a ~~subsequent--such~~ second, third, or subsequent offense, within ~~five--(5)~~ years ~~thereof~~ of the first offense, the ~~board~~ division shall ~~suspend--or~~ revoke the license or driving privilege of such person for a period of ~~one-(1)~~ year.

(c) The revocation period for all revocations made mandatory by section 31-146, R. C. M. 1947, shall be one (1) year, except as provided in subsection (b) of this section."

-End-